

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA.

CWP No. 286 of 2004

Reserved on : 12.9.2007

Date of decision : October 5, 2007

Bansi Lal ...Petitioner.

Versus:

NHPC & Others ...Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?¹ No

For the petitioner : Mr. Surinder Sharma, Advocate.

For respondent No.1. : Mr. K. D. Shreedhar, Advocate.

Sanjay Karol, J.

The present petition has been filed, inter alia praying the following reliefs:-

- “(i) That the impugned Annexure-PA i.e. final seniority list of Asstt. Grade-I/II/III as on 31.12.1993, Annexure-PE dated 27.7.1992 and Annexure-PO dated 1.4.2004 may be quashed and set aside;
- (ii) That respondent No.1 Corporation may be directed to redo the seniority list and rank the petitioner above the

¹ Whether reporters of Local Papers may be allowed to see the judgment?

respondents No.2 to 5 in the seniority list to be issued afresh;

- (iii) That respondent No.1 Corporation may be directed to convene the Review DPC for considering the case of the petitioner for promotion to the post of Superintendent Grade-II w.e.f. 27th July, 1992 with all consequential benefits like arrears of salary, seniority etc.”

Brief facts giving rise to the filing of the present civil writ petition are as under:-

On 9.2.1978, the petitioner was selected for appointment as Assistant Grade-III in Baira Siul Project. He was promoted to the post of Assistant Grade-II on 1.7.1983 and thereafter on 17.8.1994 transferred to Chamera Hydro-Electric Project, where he was further promoted as Assistant Grade-I in Chamera Hydro-Electric Project on 1.7.1988.

It is the petitioner's grievance that respondents No.2 to 5 who were juniors to him have been further promoted to the post of Superintendent Grade-II whereas the petitioner has been left out. The selection is arbitrary, whimsical and capricious. Petitioner is also aggrieved of the final seniority list of Assistant Grades-I, II & III as on 31.12.1993 for the reason that the petitioner's appointment is prior to that of respondents No. 2 & 3 and the appointment of respondent No.4 is of the same date as that of the petitioner.

Petitioner made various representations on which no action was taken. Consequently, petitioner approached this Court and on 30.6.1998, in Civil Writ Petition No. 765 of 1996 titled as Bansi Lal v.

NHPC, this Court directed the respondent-Corporation to decide the petitioner's pending representation, within a period of three weeks. The said representation was decided vide orders dated 8.1.1999. Aggrieved by the same, the petitioner again approached this Court by way of Civil Writ Petition No. 490 of 1999, and on 6.1.2004, this Court set-aside the decision and directed the respondent-Corporation to decide afresh by passing a speaking order. Consequently, on 1.4.2004, the petitioner's representation was decided afresh rejecting his claim.

Learned counsel for the petitioner has made two submissions;

- (i) the petitioner's appointment being prior to that of the respondents, in view of Rules 2.9 and 4.1.1, he being senior ought to have been selected to the post of Superintendent Grade-II;
- (ii) this Court has already interpreted the provisions of Rule 4.1.1 and held the petitioner to be senior to respondent No.4. Consequently, the seniority list has to be re-drawn in terms of the orders dated 30.6.1998 passed by this Court.

Undisputed fact borne out from the record and as pointed out by the learned counsel for respondent No.1 is that respondents No.2 to 5 were selected prior to the petitioner.

Rule 2.9 is reproduced as under:-

"2.9 Candidates selected for appointment at an earlier selection shall be senior to those selected later, irrespective of the dates of posting, except in the cases covered by paragraph 2.8 above."

A bare perusal of the same would show that there is no ambiguity in the same and seniority has to be determined from the date of selection and not appointment. The contention of the petitioner that he was appointed prior in point of time and is senior to the respondents, therefore, needs to be rejected.

Learned counsel has next referred to and relied upon the observation of this Court in Civil Writ Petition No. 765/1996 to the following effect:-

"Petitioner is elder in age than Sudesh Kumar and according to Rule 5.2, the older person in age will rank senior to the junior."

In my view, the observation of the Court that the petitioner is elder in age than Shri Sudesh Kumar, are obiter in nature. The Court did not decide the matter on merits. The Court disposed of the civil writ petition with a direction that the petitioner's pending representation be decided by the respondent-Corporation. Interse seniority between the parties was not an issue which was decided by the Court after adjudication. Therefore, no benefit can be taken by the petitioner of the said observation made by the Court;

Further, the challenge to the seniority lists of 31.12.1993 and 27.7.1992 on the basis of which seniority list as of 1.4.2004, was prepared in the present writ petition filed on 10.4.2004 is highly belated as the settled position cannot be unsettled after a period of more than one and a half decade and the prayer needs to be rejected on this count also.

I find nothing wrong with the decision taken by the respondent-Corporation in rejecting the petitioner's representation on merits. Consequently, the writ petition is dismissed.

October 5, 2007.
(*rana*)

(Sanjay Karol)
Judge.